

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3492 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MITHABHAI JITABHAI RAVAL

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.S.J.Dave,A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/06/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 22.10.1996 passed by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act.'

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate that the detenu has been carrying on illegal activities of causing hurt to the innocent persons as also committing theft and extorting money from the innocent persons and creating atmosphere of fear and three offences, one of 1995 and two of 1996 have been registered in Ghatlodia Police Station, Ahmedabad, inter-alia under Sections 143, 147, 148, 149, 324, 323, 380, 365, 342, 392, 384, 34, 120-B I.P.Code, u/s.135(1) of the Bombay Police Act and Section 25(1)(B)(A) of the Arms Act.

3. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statement of four witnesses have been relied upon.

4. The statements of the witnesses speak about incidents dated 8.9.1996 and 16.9.1996 which indicate the detenu giving threats to the concerned witnesses and beating them in public and the detenu's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention branding the petitioner - detenu as "dangerous person" under Sec. 2(c) of the PASA Act.

6. The petitioner has challenged the impugned order of detention and his continued detention on number of grounds, inter-alia, on the ground that the petitioner has not been supplied with the copy of the Bail Application and the order of Bail passed by the Court in so far as CR No.54/95 of Ghatlodia Police Station is concerned. This ground has been taken in Para : 9 of the petition. Para : 9 of the petition would read as under :

"The petitioner says and submits that he was released on bail in CR No.54/95 by the competent court. The detaining authority has not supplied copy of the bail application and bail order to the detenu. So he could not make effective representation to the authority. So his right under Article 22(5) of the Constitution of India is violated. Hence his continued detention become illegal."

No Affidavit in Reply has been filed in so far as this ground is concerned. On verification of the records it

appears that the copies of aforesaid documents pointed out by the learned Advocate appearing for the petitioner have not been supplied. Reliance in this connection has been placed upon a decision of this Court rendered on 1.8.1996 in special Civil Application No.3161 of 1996 (Coram : K.R.Vyas, J.). the said decision refers to the decision of the Honourable Supreme Court in the case of State of U.P. v/s. Kamal Kishore Saini, 1988 (1) SCC 287.

7. The learned A.G.P. has not been able to show anything against the settled law that bail application and the order of bail passed by the Court would be relevant documents and non-supply of copies thereof would infringe the provision of Article 22(5) of the Constitution of India.

8. The result is that the continued detention of the petitioner is required to be held illegal. Following order is, therefore, passed :

The impugned order of detention is quashed and set aside and the petitioner - detenu Mithabhai Jitabhai Raval is directed to be set at liberty forthwith if his detention is not required for any other purpose or case. Rule made absolute accordingly.

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